

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

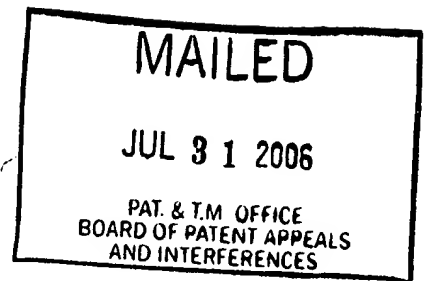
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN MORRISON, PATRICK A. BANAS,
DAVID REIMUS, JACOB G. EPP,
& GERALD L. OSTRANDER

Appeal No. 2006-1625
Application No. 09/915,033

ON BRIEF



Before JERRY SMITH, RUGGIERO, and HOMERE, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-3 and 6-8, which constitute all the claims pending in this application.

The disclosed invention pertains to a coding technique for ensuring that codes inserted into remote keyless entry transmitters are always unique. Specifically, the coding technique embeds into the code the time associated with

the assignment of the code to the transmitter. Thus, two sequentially assigned codes are not themselves sequential. Moreover, each code is guaranteed to be unique since the assignment time will never repeat.

Representative claim 1 is reproduced as follows:

1. A method of assigning an identification code to a remote entry transmitter comprising the steps of:

1) providing a number which varies by the time a code is assigned relative to other codes, and ensuring that the codes are non-sequential for codes assigned sequentially, said code also being indicative of a date and time associated with the assignment of said code; and

2) storing said code in a remote entry transmitter as a remote entry transmitter identification code.

The examiner relies on the following references:

Prosan et al. (Prosan)	4,525,805	Jun. 25, 1985
Kurosu et al. (Kurosu)	4,683,540	Jul. 28, 1987
Lambropoulous et al. (Lambropoulous)	4,881,148	Nov. 14, 1989
Guerin et al. (Guerin)	6,380,843	Apr. 30, 2002 (filed May 13, 1999)

The following rejections are on appeal before us:

1. Claims 1, 2, and 6-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lambropoulous in view of Prosan and further in view of Guerin.

2. Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lambropoulos in view of Prosan, Guerin, and further in view of Kurosu.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in the claims on appeal. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148

USPQ 459, 467 (1966). The examiner must articulate reasons for the examiner's decision. In re Lee, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). In particular, the examiner must show that there is a teaching, motivation, or suggestion of a motivation to combine references relied on as evidence of obviousness. Id. at 1343. The examiner cannot simply reach conclusions based on the examiner's own understanding or experience - or on his or her assessment of what would be basic knowledge or common sense. Rather, the examiner must point to some concrete evidence in the record in support of these findings. In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Thus the examiner must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the examiner's conclusion. However, a suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. In re Kahn, 441 F.3d 977, 987-88, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) citing In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313 (Fed. Cir. 2000). See also In re Thrift, 298 F. 3d 1357, 1363, 63 USPQ2d 2002, 2008 (Fed. Cir. 2002). These showings by the examiner are an essential part of

complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the briefs have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)(2004)].

Regarding independent claims 1 and 6, the examiner's rejection essentially finds that Lambropoulos teaches every claimed feature except (1) providing a number which varies by the time a code is assigned relative to other codes, (2) ensuring that the codes are non-sequential for codes assigned sequentially, and (3) the code being indicative of a date and time associated with the assignment of the code. The examiner cites Prosan as teaching a key programming method that randomizes a serial number at the factory to provide a key cipher code. The examiner also cites Guerin as teaching a key programming method with serial number, date, and time information of assignment to detect false keys. The examiner finds that it would have been obvious to one of

ordinary skill in the art at the time of the invention to (1) modify Lambropoulous to provide a time-varying non-sequential code for easy and consistent implementation, or (2) provide Prosan's key with a transmitter as suggested by Lambropoulous to allow remote entry control. The examiner further contends that it would have been obvious to the skilled artisan at the time of the invention to include the date and time as taught by Guerin in the Lambropoulous/Prosan combination to detect falsification [answer, pages 4 and 5].

Appellants argue that Guerin is so unrelated to Lambropoulous that Guerin's use of time and date in a code has no benefit or purpose in Lambropoulous' system [brief, page 4]. According to appellants, Guerin uses date codes for two purposes: (1) to customize each of several carriers (since the carriers may be changed, updated, etc.), and (2) to calculate each key's expiration date [brief, pages 6 and 7; reply brief, pages 2 and 3]. Appellants note that Guerin's customization allows the lock to eliminate keys manufactured by a carrier that is no longer authorized [brief, page 6; reply brief, page 2]. According to appellants, no need exists in Lambropoulous to code multiple keys made by multiple carriers since Lambropoulous has an individual code that is taught directly to the vehicle [brief, page 6]. Appellants also note that the dates in Guerin are not necessarily non-sequential, but rather several carriers could be customized on the same day [brief, pages 6 and 7]. Moreover, according to appellants, Guerin's use of date codes to calculate the keys' expiration dates has no use in Lambropoulous' system because, among other things, it would be

unduly burdensome for users in Lambropoulous' system to periodically reactivate each of their keys [brief, page 7; reply brief, page 3].

The examiner responds that Guerin's date/time code would be useful with Lambropoulous. Since Guerin's system prevents programming of false key codes from the key into the lock, the examiner contends that combining such a system with Lambropoulous would prevent the vehicle receiver in Lambropoulous from storing unauthorized codes [answer, page 8]. The examiner further notes that the carrier in Guerin stores only one code at a time, and the carrier's code is updated based upon a time/date parameter. According to the examiner, such a system would be useful in Lambropoulous to prevent fraudulently modifying the transmitter codes [answer, page 9]. The examiner also notes that requiring users to periodically reactivate keys in Lambropoulous would be no more burdensome than paying routine monthly bills (e.g., lease and loan payments, etc.) [answer, page 10].

The examiner also notes that the claims do not require that the date alone be non-sequential. Rather, the examiner notes that claims require that the transmitter stores an identification code that incorporates information that (1) is non-sequential, and (2) varies in order of the time that the code was determined [answer, pages 9 and 10]. Turning to the cited prior art, the examiner contends that the modified serial number of the Lambropoulous/Prosan combination is non-sequential. Moreover, according to the examiner, Guerin stores

identification information that includes the serial number and time/date information [answer, page 10].

We will not sustain the examiner's rejection of independent claims 1 and 6. Initially, we note that appellants do not contest the examiner's combination of Lambropoulos and Prosan, but rather argue the examiner's combination of Guerin with Lambropoulos' system [brief, page 5]. We agree with this assessment, and likewise agree with appellants that Guerin is not properly combinable with Lambropoulos and Prosan in the manner proposed by the examiner.

Guerin discloses a secured access checking system that includes storage carriers C comprising electronic keys CL associated with lock L. The carriers are customized by a production machine LE that records for each user an identification information element (IDA) comprising the user's name, apartment number, serial number, and a data element D_pA that represents the date and time of customization [Guerin, col. 3, lines 42-57; col. 4, lines 9-14; Fig. 1]. The lock detects false electronic keys automatically by comparing the customization date of a particular carrier's electronic key with the stored customization date associated with the same carrier [Guerin, col. 4, lines 54-57]. Access is permitted if the dates match. If the electronic key's date is more recent than the stored customization date, then the lock determines that the key is a new version and updates its list of keys accordingly. If the key's date is older than the stored

customization date, however, the lock determines that the key is a re-utilization of a lost or stolen key and accordingly prohibits access [Guerin, col. 58-67].

We agree with appellants that such a teaching is not reasonably combinable with the Lambropoulous/Prosan combination in the manner proposed by the examiner. We note at the outset that the claims require a remote entry transmitter code with information that (1) is non-sequential, (2) varies in order of the time the code was assigned, and (3) includes information associated with the date and time the code was assigned. Although Guerin compares the electronic key's customization date and time to determine whether to permit access and update the lock's stored key list, we disagree with the examiner that the skilled artisan would find it obvious to incorporate this date and time information into the unique, randomly-generated code of Lambropoulous' transmitter.

As noted by appellants, the customization date and time of Guerin is used for comparison purposes for false key detection and expiration date calculations. The customization date, however, is not used in conjunction with other data to ensure the uniqueness of a transmitter code that is non-sequential, yet varies in order that the time the code was determined along with the date and time of code assignment as claimed. In short, we find no reasonable motivation to combine Guerin with the Lambropoulous and Prosan references apart from hindsight reconstruction of the claimed invention.

Nevertheless, we cannot say that no prior art exists that would teach or suggest adding or embedding a date and time element to a non-sequential data

string in a transmitter code to ensure that the code was unique. We can say, however, that no such prior art exists on this record. Accordingly, we will not sustain the examiner's rejection of independent claims 1 and 6. Since we do not sustain the examiner's rejection of the independent claims, we likewise do not sustain the examiner's rejection of dependent claims 2, 3, 7, and 8.

In summary, we have not sustained the examiner's rejection with respect to any of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-3 and 6-8 is reversed.

REVERSED

Jerry Smith
JERRY SMITH

JERRY SMITH
Administrative Patent Judge

Joseph E. Buggia
JOSEPH E. BUGGIA

JOSEPH F. RUGGIERO
Administrative Patent Judge

Jean R. Homere

JEAN R. HOMERE
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